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In the Supreme Court of the United States

OCTOBER TERM 1941

No. 777

MCLAUGHLIN LAND AND LIVESTOCK COMPANY, a corporation,
Petitioner,

vs.

BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, a corporation,
Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit
and
Brief In Support Thereof

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Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

The above named petitioner respectfully petitions this Honorable Court for a writ of certiorari to review

a decision and judgment of the Circuit Court of Appeals for the Ninth Circuit, entered on the 4th day of September, 1941, affirming a judgment of the United States District Court in and for the Northern District of California.

Said judgment of the District Court directed the dismissal of the application of petitioner herein for relief under Section 75 of the Bankruptcy Act.

OPINION OF THE COURT BELOW.

The opinion of the United States Circuit Court of Appeals for the Ninth Circuit was rendered on the 4th day of September, 1941. It has not as yet been reported in the Federal Reporter. Said opinion is set forth in the record at pages 206-208, inclusive.

Said opinion, in effect, held that the burden of petitioner herein in the proceedings below was to establish at a hearing before the Special Master, to whom respondent's motion to dismiss had been referred, that said petitioner was a farming corporation. The opinion, in effect, held further, that petitioner had not sustained that burden at the hearing before said Special Master of respondent's motion to dismiss petitioner's application for relief under said section of the Bankruptcy Act.

The primary grounds of the judgment and order of the District Court were:

(a) Petitioner herein was not a farmer within the meaning of the Bankruptcy Act because it was not

possessed of any property which it might lawfully farm (R. p. 64);

(b) Petitioner was estopped by judgments in state court actions and previous proceedings of petitioner under said Section 75 from attacking the validity of respondent's claimed title to certain valuable property, the ownership of which petitioner claimed when it filed its present application for relief under said Section 75 of the Bankruptcy Act (R. pp. 64, 65, 128);

(c) The parties, through their counsel, had stipulated before the Special Master in said proceedings that petitioner's application for relief under said Bankruptcy Section should be dismissed in the event that the state court in an unlawful detainer action, then pending, should decide that petitioner did not own farming property (R. p. 127).

JURISDICTION.

The decision and judgment of the Circuit Court of Appeals was rendered on the 4th day of September, 1941, and this petition is filed within three months thereafter. The jurisdiction of this Court is invoked under Title 28, Judicial Code and Judiciary, Section 347, Subd. A (Section 240, Judicial Code as amended). The statute of the United States involved herein is Section 75 of the Bankruptcy Act (11 U.S.C.A. Sec. 203). This statute was enacted to afford agricultural debtors opportunity to seek an agreement with their

creditors or an extension of the maturity of their obligations (*Paradise Land & Livestock Co. v. Federal Land Bank of Berkeley*, 108 Fed.(2d) 832; *John Hancock Mutual Life Ins. Co. v. Bartels*, 60 Sup. Ct. 221, 84 L. ed. 154).

SUMMARY STATEMENT OF THE MATTER INVOLVED.

On December 16, 1939, petitioner herein filed in said District Court its application for relief under Section 75 of the Bankruptcy Act, together with a schedule of all its assets and liabilities (R. pp. 1-23). The petition for relief set forth that petitioner was a corporation organized and existing under the laws of California; that it was a farming corporation; that 75% of its stock was owned by farmers engaged in producing products of the soil; that the whole of its income was derived from such operations, and that the farming operations of the corporation then included the actual cultivation of and production from three hundred acres of land in barley, and two hundred fifty acres in grain, as well as the raising of chickens, turkeys, sheep and cattle for sale in the open market (R. p. 2). The schedule of its assets accompanying said petition for relief set forth the property here involved (R. pp. 12-13), the ownership of which property has been the subject of protracted litigation between the parties hereto.

The petition of petitioner for relief under said Bankruptcy Section was duly verified and, as required by said Bankruptcy Section, said petition was ap-

proved by the District Court as properly filed under said Bankruptcy Section (R. pp. 23-24). Immediately upon the foregoing order of approval by said District Court, the matter was referred to a Conciliation Commissioner, appointed by said District Court to hear and consider said application for relief. Although said section of the Bankruptcy Act clearly contemplated a hearing before said Conciliation Commissioner, no such hearing has ever been held.

Instead, respondent immediately filed its motion to dismiss appellant's application for relief, respondent contending that petitioner was not a farmer within the meaning of said Bankruptcy Act; that it, the respondent, became the owner of said farming property at a foreclosure sale held on March 26, 1932, pursuant to a deed of trust executed by petitioner herein to respondent, and that in any event, petitioner was estopped to deny the validity of said sale because of previous proceedings of respondent under said Bankruptcy Section and by reason of certain state court actions wherein, the validity of said sale is claimed to have been determined (R. pp. 26-35).

To the foregoing motion of respondent to dismiss petitioner's application for relief, petitioner herein in due time filed its answer (R. pp. 36-52). Said answer principally set forth that neither the validity of said foreclosure sale, nor the matter of ownership of said farming property, had been determined in the previous proceedings of petitioner under said Bankruptcy Section, or in any of said state court actions.

Respondent's motion to dismiss said proceedings was referred by said District Court to Paul T. Gallagher as Special Master (R. pp. 24-25). On April 2, 1939, the attorneys who were then counsel for petitioner herein and the attorneys for respondent filed with said Special Master a stipulation providing that if the state court decision in an unlawful detainer action then pending in the state courts should determine, in effect, that petitioner had no farming property, then the proceedings of petitioner under Section 75 should be dismissed (R. p. 69). Meanwhile, the motion of respondent to dismiss the proceedings of petitioner for relief under said section of the Bankruptcy Act was held in abeyance to await the outcome of said decision in the state court action then pending.

Some time thereafter the state court rendered its decision in favor of respondent (105 P.(2d) 607). That decision rested, for the most part, upon the finding that the matter of the validity of the bank's title to said property had become res adjudicata in the previous proceedings of petitioner under said section of the Bankruptcy Act (105 P.(2d) 607, 611, 612). It should be particularly observed that the state court in that decision pointed out that questions of title cannot be determined in unlawful detainer actions such as was then pending between the parties and as was then finally decided by said state court (105 P.(2d) 615).

Following that decision by said state court, the Special Master filed herein his report, findings and

conclusions recommending the dismissal of petitioner's application for relief under said section upon the following main grounds:

(a) Petitioner was not a farmer because it was not lawfully possessed of farming property;

(b) Respondent became the owner of the farming property in the foreclosure sale.

(c) Petitioner was estopped to question the validity of respondent's title to said property by reason of the judgments in a state court deficiency action commenced after said foreclosure sale; in the action to renew the judgment obtained in said deficiency action; that it was further estopped to question said title by reason of the judgment in the last state court unlawful detainer action (105 P.(2d) 607), the judgment in the previous proceedings of petitioner under said Section 75 of the Bankruptcy Act, and by virtue of the stipulation entered into between former counsel for petitioner and counsel for respondent stipulating that petitioner's present application for relief under Sec. 75, should be dismissed in the event that the state court in the last unlawful detainer action should determine that petitioner was not the owner of the farming property (R. pp. 64-65).

On December 19, 1940, petitioner filed its exceptions to said Special Master's report, findings and conclusions (R. p. 77). On December 21, 1940, petitioner filed its motion and accompanying affidavit to be relieved from said stipulation of counsel heretofore referred to upon the ground that said stipulation

was entered into unlawfully and improvidently (R. pp. 94-106).

On January 9, 1941, the Special Master's findings and conclusions were approved by said District Court and judgment of dismissal of petitioner's proceedings was thereupon ordered by said District Court. At the same time the motion of petitioner to be relieved from the foregoing stipulation of counsel was denied (R. p. 126).

From the order and judgment of said District Court dismissing petitioner's proceedings under said section of the Bankruptcy Act and denying petitioner's application to be relieved from the foregoing stipulation an appeal was taken to the United States Circuit Court of Appeals for the Ninth Circuit. Said Circuit Court affirmed the order and judgment of said United States District Court upon the ground heretofore pointed out that petitioner had not sustained its burden of proving that it was farming corporation, to wit: the owner of this farming property.

To be further informative as to the background of this petition, the following history of the extended controversy between the parties is briefly referred to.

The obligation which gave rise to the protracted litigation was incurred by petitioner on March 17, 1931. On that date petitioner was the owner of extensive farming land in Monterey County, California, including the six hundred acre tract herein involved and which is listed in the schedules as an asset of petitioner. On said March 17, 1931, petitioner exe-

cuted to respondent its promissory note in the sum of $173,800. To secure the payment of said note, petitioner deeded its entire farming property, including the six hundred acre tract listed in petitioner's schedules, to Corporation of America as trustee for respondent. Owing to the economic depression petitioner defaulted in the payment of said note. A sale of said property under the terms of said deed of trust was noticed by said trustee for March 26, 1932 (94 Fed.(2d) 491). Respondent claims to have become the purchaser of said property at said sale for the sum of $80,000 (R. p. 55). The fact of said sale, as well as its validity, has been continuously the subject of dispute between said parties. Said sale purports to have been made by one not authorized under the law to make or conduct such sale (94 Fed.(2d) 491, 492).

On May 27, 1932, respondent commenced its first unlawful detainer action to dispossess petitioner. Judgment was rendered in favor of petitioner herein. In April, 1933, action for the balance alleged to be remaining unpaid upon said promissory note was commenced by the assignee of respondent (R. p. 56). Respondent had judgment therein. Subsequently respondent commenced action to *renew* the deficiency judgment. On July 11, 1933, a second unlawful detainer action was instituted by respondent against petitioner. In that action petitioner again had judgment (22 Cal. App.(2d) 411; 71 P.(2d) 291).

On March 9, 1936, petitioner filed its first petition in said District Court for relief under said Section 75

of the Bankruptcy Act. In those proceedings, as in the instant one, respondent moved for a dismissal, and after a hearing before and recommendation by the Special Master therein, said District Court directed the dismissal of said petition.

The District Court there held (1) that it was without jurisdiction because of the corporate incapacity of petitioner, and (2) petitioner was not the owner of farming property (94 F.(2d) 491). That judgment of dismissal was affirmed by the Circuit Court of Appeals, Ninth Circuit, solely upon the ground of the then existing corporate incapacity of petitioner, petitioner having failed to pay its state franchise tax (94 F.(2d) 491). Said Circuit Court in that decision did not presume to determine either the validity of the foreclosure sale or the question whether petitioner or respondent was the owner of the property.

Following said decision by said Circuit Court, said respondent on January 10, 1939, commenced its third and last unlawful detainer action to dispossess petitioner. Respondent had judgment in said action as heretofore pointed out (105 P. 2d 607).

Application to this Court for writ of certiorari to review said state court decision was denied on May 5, 1941 (61 Sup. Ct. Rep. 958).

As heretofore pointed out, the Special Master and the District Court in the instant proceedings held that the previous proceedings of petitioner under said Section 75 and certain state court actions, namely, the deficiency judgment, the action to renew same and

the judgment in the final unlawful detainer suit, estopped petitioner from questioning the claim of respondent that it owned this farming property (R. p. 64).

The recent decision of the Circuit Court, it should be emphasized, peculiarly held in effect that petitioner had not established that it was the owner of farming property and therefore had not proved that it was a farmer, while the District Court and Special Master expressly determined that petitioner was *foreclosed* from even attempting to establish such fact by reason of the state and federal proceedings referred to.

QUESTIONS PRESENTED.

The following questions arise in this application for a writ of certiorari:

(1) How could petitioner establish that it was the owner of the property listed in its schedules and therefore a farmer when the District Court and Special Master held it to be estopped from making such showing by the decisions in the state court actions and the former proceedings of petitioner under said section of the Bankruptcy Act?

(2) Was not such question of ownership of such property a matter which could have been properly determined only in summary proceedings instituted in the bankruptcy court under the direction of the Conciliation Commissioner?

(3) In view of the spirit and purpose of said section of the Bankruptcy Act, was not petitioner entitled to a hearing before said Conciliation Commissioner and an opportunity at said hearing with all creditors and claimants present to procure a composition or extension of its debts?

(4) Were not the Special Master and the District Court arbitrary and in error in determining that they were controlled by state court adjudications or by former proceedings of the petitioner under said Section 75 upon the matter of ownership of said farming property?

(5) Was it not the duty of the District Court to deny the motion of respondent to dismiss, to direct that a hearing of the application of petitioner for relief be held, in accordance with the statute, before the Conciliation Commissioner, and to further direct that any question arising with reference to the ownership of said property should be determined in summary proceedings especially instituted in the bankruptcy court for that purpose?

(6) Was the foreclosure sale of the farming property valid notwithstanding the Special Master's findings in the previous proceedings of petitioner under Section 75 that the sale had been conducted by a person wholly unauthorized?

(7) Was petitioner estopped from questioning the validity of said sale by reason of the judgments in the state court actions between the parties or by the

previous proceedings of petitioner under said section of the Bankruptcy Act?

(8) Was petitioner estopped from attacking said sale by reason of the judgment in the previous proceeding of petitioner under said Section 75 in view of the fact that the District Court therein had determined that it had no jurisdiction owing to petitioner's corporate incapacity and the Circuit Court of Appeals in that particular proceeding specifically affirmed said judgment upon the single ground that petitioner was at that time incapacitated from conducting its corporate farming business? (94 Fed.(2d) 491)

(9) Was not the stipulation entered into by counsel for the parties as to the dismissal of petitioner's instant proceedings unlawful, improvident and ineffective?

(10) Was not the Special Master in error in accepting said stipulation and basing his recommendation of dismissal upon said stipulation and the asserted effect thereof?

(11) Was not the District Court in error in refusing to relieve petitioner from said stipulation and in approving the findings and recommendation of the Special Master predicated upon said stipulation and the asserted effect thereof?

(12) Is it necessary that an applicant for relief under said Section 75 should be the owner of farming property?

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

(1) In holding that the petitioner was estopped by its former proceedings under Section 75 or by state court actions to dispute respondent's claim of ownership of said farming property, the lower court decided an important question of federal law and procedure relating to said Section 75 of the Bankruptcy Act which has not yet, but which should be, settled by this Court.

(2) In holding that petitioner had not established that it was the owner of farming property, said lower court adopted a procedure in conflict with that set forth by the decisions of this Court, as well as of other Circuit and District Courts, and which procedure would ultimately divest bankruptcy courts of the exclusive authority given to courts in bankruptcy to determine themselves, and irrespective of state court actions, matters relating to the ownership of property possessed by a debtor and listed as an asset in the schedules.

(3) In holding that the former proceedings of petitioner under said Section 75 and that the state court judgments were res judicata on the question of ownership of said farming property, the lower court followed a bankruptcy procedure never before followed or approved by this Court or any Circuit Court in determining disputes over title to property claimed by a bankrupt or debtor.

(4) In holding that petitioner was foreclosed by state court actions and the former proceedings of the

petitioner under Section 75 from questioning the claimed ownership of respondent to said farming property, the judgment of the lower court was wholly arbitrary and erroneous in view of the fact that neither the state court actions nor the former proceedings of petitioner under said Section 75 made any valid determination as to the title of the property claimed herein as belonging to petitioner.

(5) In declaring, in effect, that the stipulation of counsel as to the dismissal of the application of petitioner for relief, in the event that the pending state court action should determine that respondent was the owner of the property, was a proper and lawful stipulation and one which a Special Master might properly accept and use as a basis for his subsequent recommendation of dismissal, the lower court decided an important question of federal law and followed a procedure in conflict with the decisions of other Circuit and District Courts, as well as the decisions of this Court.

(6) This case is of the utmost public importance in connection with the proper administration of Section 75 of the Bankruptcy Act. It presents important questions in that regard which necessarily should be finally determined by this Court. Such questions relate to the powers and duties of a District Court or Special Master in proceedings under said Section 75, the proper manner and procedure for determining disputed claims to property listed by a debtor, and the effect, if any, of pending or prior state court ac-

tions purporting to determine either the matter of possession or the question of title to such property. It likewise involves an important and controversial question frequently arising in debtor's proceedings and which the lower court has decided contrary to the plain provisions of the act, namely, whether a farmer must be the owner of the farming property to obtain relief under said Section 75.

WHEREFORE, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Ninth Circuit, instructing and directing that court to certify and send to this Court, for its review and determination, on a date to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, 9816, McLaughlin Land and Livestock Company, a corporation, Debtor, Appellant, vs. Bank of America National Trust & Savings Association, a corporation, appellee, and that the judgment of the Circuit Court be reversed by this Honorable Court, and that your petitioner have such other and further relief as to this Honorable Court may seem proper and just.

MCLAUGHLIN LAND AND LIVESTOCK COMPANY, a Corporation,
Petitioner.

GEORGE THOMAS DAVIS,
Counsel for Petitioner.